Message

From: Hough, Palmer [Hough.Palmer@epa.gov]
Sent: 9/5/2012 10:36:07 PM
To: John Ettinger [Ettinger.JohnLNDU@usepa.onmicrosoft.com]
CC: Keeler, Barbara [Keeler.Barbara@epa.gov]; Gutierrez, Raul [Gutierrez.Raul@epa.gov]; Sharon Parrish [Parrish.SharonLNDU@usepa.onmicrosoft.com]; CN=Tamara Mick/OU=R6/O=USEPA/C=US@EPA; Thomas, Jenny [Thomas.Jenny@epa.gov]
Subject: Re: A Policy Question re: Initial Credit Release Rates

John:

Just left you a message. I would like to talk when you have a moment. Some initial thoughts regarding your questions:

1) The rule (see 332.8(m) and 332.8 (o)(8)) gives the Corps and IRT a great deal of latitude in the establishment of credit release schedules as they can be very project specific (although some districts and IRTs have developed template credit release schedules that provide "rules of thumb" for their districts/states). It is ultimately up to you and your IRT colleagues to determine if you feel comfortable with such a large initial release in your context and in light of your alternatives. I would not worry about setting a national precedent but you would have to deal with the consequences of potentially setting one within NO District.

2) I'm not sure I follow your financial assurance issue. One of the requirements of the initial credit release is that "appropriate financial assurances have been established" (332.8(m)). For me to feel comfortable, especially with such a large initial release, I would want financial assurances (e.g., letter of credit, performance bond, escrow account, casualty insurance, etc) sufficient "to ensure a high level of confidence that the compensatory mitigation project will be successfully completed, in accordance with applicable performance standards. "(332.8(n)(1)) which typically means the financial assurance amount is based on the **full** construction and implementation costs (not some portion of those costs tied to released credits as I think you have described). So for example if your banker gets his 45% credit release and then walks away, you would want to be able to call a financial assurance that would provide funds adequate to complete the entire construction and implementation of the project (i.e., everything necessary to reach its performance standards).

-Palmer

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To: Palmer Hough/DC/USEPA/US@EPA
Cc: Sharon Parrish/R6/USEPA/US@EPA, Tamara Mick/R6/USEPA/US@EPA, Raul Gutierrez/R6/USEPA/US@EPA, Barbara Keeler/R6/USEPA/US@EPA
Date: 09/05/2012 04:44 PM
Subject: A Policy Question re: Initial Credit Release Rates

Hi Palmer,

I have a couple of questions regarding initial credit release rates.

Construction costs for coastal marsh banks in Louisiana can be quite high relative to forested banks. This is because marsh restoration in coastal LA typically involves dredging, transporting, and depositing sediments to recreate appropriate soil elevations. Depending on the size of the bank, this can be in the millions to tens of millions of dollars. This is a sizeable investment risk.

At least two bankers are seeking to capture some portion of the marsh mitigation needs generated by the Corps' post-Katrina levee upgrades. (Incidentally, these levee upgrades paid for themselves on the 29th of August 2012.) The Corps has said that to be eligible for consideration as a levee mitigation option, the banks must have sufficient available credits.

In order to have sufficient available credits in this case, a banker must either invest in actual marsh restoration activities up front or convince the Corps (and IRT) to release sufficient credits prior to implementation of the marsh mitigation project. Given the sizeable risk associated with the former, the bankers are naturally interested in the latter.

I am reviewing a proposed modification to the Chef Menteur marsh bank (which would be under new ownership). The proposed modification would have the Corps releasing 45% of the total potential credits upon signing of the MBI, establishment of the conservation servitude, and only after the sponsor has obtained a letter of credit representing 100% of the costs of the released credits.

An initial credit release of 45% is higher than usual down here (the existing MBI has it at 25%). But, given that this form of marsh mitigation is preferable to the options, I am interested in trying to make it work. I don't see any substantial or unusual risk since we would have sufficient funds (via the letter of credit) to compensate for all credits initially released in the event of bank default.

My questions for you are whether (1) a 45% initial release rate poses any issues in terms of precedents we would rather not establish and (2) if you agree that a letter of credit could adequately minimize risks of bank default (assuming the cost calculations behind the credit amount are accurate)?

Thanks in advance for your feedback on this. Please call me at your convenience if you wish to discuss.

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